

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition :
 of :
MERAD PRODUCTIONS, INC. :
for redetermination of deficiency of :
franchise tax under Article 9-A of :
the tax law for the period August 3, :
1971 to December 31, 1971. :

The taxpayer having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the period August 3, 1971 to December 31, 1971, and a hearing having been held in connection therewith at the office of the State Tax Commission, 2 World Trade Center, New York City, at which hearing E. J. Hammond, assistant secretary, and R. E. Frisch, Esq. of counsel, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Merad Productions, Inc. ("Merad") was incorporated in Nevada in 1966 and began doing business in New York the same year. On August 3, 1971 its entire capital stock was acquired by Twentieth Century-Fox Film Corporation ("parent"). The parent files on a 52/53 week basis for federal income tax purposes and the operations of Merad for the period 8/3/71 to 12/29/71 were included in the parent's consolidated federal return for the year ended 12/29/71. A combined return is filed by the parent with some of its wholly owned subsidiaries for New York State franchise tax purposes. The parent, without

receiving prior permission, included the operations of Merad for the period 8/3/71 to 12/29/71 in its combined return filed for the calendar year 1971.

(2) The Corporation Tax Bureau disallowed the inclusion of Merad in the combined return filed by the parent and issued a statement of audit adjustment dated 4/15/74 and notice of deficiency taxing Merad on an individual basis as follows:

	<u>Merad Productions, Inc.</u> <u>Period 8/3/71 to 12/31/71</u>	
Entire net income	per CT-3 report	\$96,220.41
Tax at 9%		8,659.84
Tax per report		125.00
Deficiency		8,534.84

(3) The principal asset of Merad was a 47 1/2 percent interest in a joint venture called the Dolly Company, producer of the stage play "Hello Dolly" which opened in New York City in 1965. The parent, which is engaged in the production and distribution of motion picture films, acquired the right to produce a film from the play in 1965. The contract provided that the film could be exhibited beginning in June 1971. The production of the film was completed in early 1968.

In order to accelerate the exhibition date of the film, the parent entered into a contract dated 12/20/68 with the stockholder of Merad whereby the stockholder could exercise an option to sell his stock to the parent during the period 5/2/71 to 6/30/71. Such option was exercised and the date of sale was 8/3/71. The stockholder received \$2,450,000.00 in exchange for the stock. The contract of 12/20/68 led to agreements permitting the parent to accelerate the exhibition date of the film to December 1969.

During the period 8/3/71 to 12/29/71, the intercompany transactions between Merad and the parent consisted of the following:

(a) On 8/11/71 a balance of \$642,804.00 in the Merad bank account was transferred to the parent's bank account. This resulted in a receivable of \$642,804.00 due Merad from the parent.

(b) The parent made a charge of \$173.00 to Merad for federal income tax paid.

(c) The parent made a charge of \$150.00 to Merad for accrual of New York State franchise tax and New York City general corporation tax.

(4) Section 211.4 of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any other such corporations . . . "

The State Tax Commission hereby

DECIDES:

(A) Merad was properly excluded from the combined return for 1971 because of lack of substantial intercompany transactions involving income and expenses. The parent's payment of \$2,450,000.00 for the stock of Merad was not an intercompany transaction between the parent and Merad, since it was paid to the latter's stockholder. Merad received its gross income essentially from one source, namely, its interest in the joint venture which produced the stage play of Hello Dolly. The parent received its gross income from the production and distribution of many films. In the absence of substantial intercompany transactions, inclusion of Merad in the combined return would produce an improper tax result in that its net income would be offset against losses of other corporations in the combined group, and its business allocation of 100% would be reduced to the combined business allocation of approximately 14.9%. It is the policy of the Tax

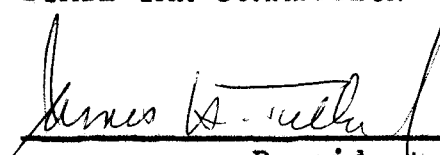
Commission not to permit or require inclusion of a corporation in a combined return where taxation on an individual basis produces a more proper tax result.

(B) The notice of deficiency issued against Merad as indicated at (2) is affirmed, together with interest in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 3rd Day of July 1975.

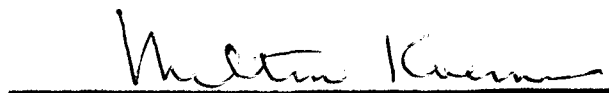
STATE TAX COMMISSION



President



Commissioner



Commissioner